

Decision 06-06-058 June 29, 2006

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application Pacific Gas and Electric Company
(U 39 E) for authority to increase revenue
requirements to recover the costs to replace steam
generators in Units 1 and 2 of the Diablo Canyon
Power Plant.

Application 04-01-009
(Filed January 9, 2004)

**OPINION GRANTING INTERVENOR COMPENSATION
TO AGLET CONSUMER ALLIANCE FOR SUBSTANTIAL CONTRIBUTIONS
TO DECISION 05-02-052 AND DECISION 05-11-026**

This decision awards Aglet Consumer Alliance (Aglet) \$30,249.17 in compensation for its substantial contributions to Decision (D.) 05-02-052 and D.05-11-026. This is a decrease of \$34,832.50 from the amount requested. This proceeding is closed.

1. Background

Diablo Canyon Power Plant (Diablo) is a nuclear power plant owned and operated by Pacific Gas and Electric Company (PG&E) consisting of two units, Unit 1 and Unit 2, with a capacity of approximately 2,260 megawatts (MW). Each unit has four steam generators manufactured by Westinghouse Electric Corporation (Westinghouse). In each steam generator, the heat from water circulated through the reactor is used to turn another stream of water into steam that is used to run the turbines that drive the electric generators.

Diablo is currently licensed by the Nuclear Regulatory Commission (NRC) to operate until 2024 (Unit 1) and 2025 (Unit 2).¹ PG&E estimated that Diablo will likely shut down because of the degradation of the steam generators in 2013 (Unit 2) and 2014 (Unit 1). As a result, PG&E requested approval in this application for its steam generator replacement program (SGRP).

Hearings were held from September 20 through October 1, 2004. The application was submitted upon the receipt of reply briefs on November 9, 2004. On February 24, 2005, the Commission adopted D.05-02-052, an interim decision which presented the Commission's preliminary findings as to the cost-effectiveness of the SGRP. The proceeding remained open to consider the results of the environmental review pursuant to the California Environmental Quality Act (CEQA). On November 18, 2005, the Commission adopted D.05-11-026, which approved the SGRP with specified conditions, and certified the Final Environmental Impact Report (Final EIR) pursuant to CEQA.

2. Requirements for Awards of Compensation

The intervenor compensation program, enacted in Pub. Util. Code §§ 1801-1812, requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if the intervenor makes a substantial contribution to the Commission's proceedings. The statute provides that the utility may adjust its rates to collect the amount awarded from its ratepayers. (Subsequent statutory references are to the Public Utilities Code unless otherwise indicated.)

¹ This assumes recapture of the approximately three years of operating license for Unit 1 consumed prior to fuel loading and full-power operation. PG&E forecasted an 80% probability of NRC approval of its request for recapture.

All of the following procedures and criteria must be satisfied for an intervenor to obtain a compensation award:

1. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (or in special circumstances, at other appropriate times that we specify). (§ 1804(a).)
2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)
3. The intervenor should file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)
4. The intervenor must demonstrate “significant financial hardship.” (§§ 1802(g), 1804(b)(1).)
5. The intervenor’s presentation must have made a “substantial contribution” to the proceeding, through the adoption, in whole or in part, of the intervenor’s contention or recommendations by a Commission order or decision. (§§ 1802(i), 1803(a).)
6. The claimed fees and costs are reasonable (§ 1801), necessary for and related to the substantial contribution (D.98-04-059), comparable to the market rates paid to others with comparable training and experience (§ 1806), and productive (D.98-04-059).

For discussion here, the procedural issues in Items 1-4 above are combined, followed by separate discussions on Items 5-6.

3. Procedural Issues

The first prehearing conference in this matter was held on February 27, 2004. Aglet timely filed its NOI on March 5, 2004. In its NOI, Aglet asserted financial hardship.

Section 1802(b) (1) defines a customer as:

- (A) A participant representing consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the commission.
- (B) A representative authorized by a customer.
- (C) A representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represent the interests of residential customers, or to represent small commercial customers who receive bundled electric service from an electric corporation.

In this case, Aglet is a customer as defined in § 1802 (b)(1)(C) because its members are small residential customers, some of whom are served by PG&E, and it is authorized pursuant to its bylaws to represent the interests of residential customers.

On April 15, 2004, Administrative Law Judge (ALJ) O'Donnell ruled that Aglet is a customer pursuant to § 1802(b)(1)(C), and meets the financial hardship condition pursuant to § 1802(g). Aglet filed its request for compensation on January 20, 2006, within 60 days of D.05-11-026 being issued.² In view of the above, we find Aglet has satisfied all the procedural requirements necessary to make its request for compensation.

4. Substantial Contribution

In evaluating whether a customer made a substantial contribution to a proceeding we look at several things. First, did the ALJ or Commission adopt one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer? (See §1802(i).) Second, if the customer's contentions or recommendations paralleled those of another party,

² No party opposes the request.

did the customer's participation materially supplement, complement, or contribute to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision? (See §§ 1802(i) and 1802.5.) As described in §1802(i), the assessment of whether the customer made a substantial contribution requires the exercise of judgment.

In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.³

Should the Commission not adopt any of the customer's recommendations, compensation may be awarded if, in the judgment of the Commission, the customer's participation substantially contributed to the decision or order. For example, if a customer provided a unique perspective that enriched the Commission's deliberations and the record, the Commission could find that the customer made a substantial contribution. With this guidance in mind, we turn to the contributions Aglet claims it made to the proceeding.⁴

4.1 Capital Additions

Aglet recommended that base capital additions be increased to \$87 million escalated to future years in the same manner as PG&E's estimate. We adopted

³ D.98-04-059, 79 CPUC2d, 628 at 653.

⁴ In the course of this proceeding, Aglet made a ratemaking proposal that would have guaranteed SGRP financial benefits to ratepayers. This proposal was not adopted, and Aglet has not requested compensation related to this issue.

Aglet's proposal for the years after 2015. Therefore, we find Aglet made a substantial contribution regarding capital additions.

4.2 Proposed Interim Decision (PD)

Aglet made recommendations in its comments on the PD that were adopted in D.05-02-052. In particular, Aglet recommended specific language regarding the cost cap and recommended that the inflation adjustment be clarified. Aglet's recommendations concerning the cost cap and inflation adjustment were adopted in D.05-02-052. We find Aglet made a substantial contribution regarding its comments on the PD.

5. Reasonableness of Requested Compensation

Aglet requests \$65,081.67 for its participation in this proceeding. After correction of a computational error, the amount is \$65,071.67 as follows:

Requested Compensation

Professional hours - Weil	190.26 hours @ \$250/hr =	\$47,565.00
Travel hours ⁵ -Weil	52.70 hours @ \$125/hr =	\$6,587.50
Professional hours - Czahar	43.60 hours @ \$220/hr =	\$9,592.00
Expenses		<u>\$1,327.17</u>
Total		\$65,071.67

In general, the components of this request must constitute reasonable fees and costs of the customer's preparation for and participation in a proceeding that resulted in a substantial contribution. The issues we consider to determine reasonableness are discussed below.

⁵ Includes time to prepare the compensation request.

5.1 Hours and Costs Related to and Necessary for Substantial Contribution

We first assess whether the hours claimed for the customer's efforts that resulted in substantial contributions to Commission decisions are reasonable by determining to what degree the hours and costs are related to the work performed and necessary for the substantial contribution.

Aglet documented its claimed hours by presenting a daily breakdown of the hours spent by James Weil and Ray Czahar, accompanied by a brief description of each activity. The hourly breakdown reasonably documents the total hours spent. Aglet allocated its hours as follows:

Requested Hours

Cost-Effectiveness - Weil	83.51
Cost-Effectiveness - Czahar	29.00
Capital Additions - Weil	32.79
Other - Weil	44.06
General - Weil	29.90
General - Czahar	14.60
Travel - Weil	52.70

Aglet made no convincing explanation of how it made a substantial contribution regarding the cost-effectiveness of the SGRP in this proceeding. Therefore, we do not award compensation for the hours allocated to "Cost-Effectiveness."

As discussed previously, Aglet made a substantial contribution regarding capital additions. Therefore, we award compensation for the hours allocated to "Capital Additions."

Aglet did not attribute the hours labeled "Other" to specific issues. Aglet made no convincing explanation of how it made a substantial contribution for these hours except for those hours related to its comments on the PD that led to

D.05-02-052. As discussed above, Aglet made a number of recommendations in its comments on the PD that were adopted. Therefore, we award compensation for the 13.8 hours (Weil) Aglet spent preparing those comments. We do not award compensation for the remaining hours allocated to "Other."

The hours Aglet allocated to "General" were spent on the initial review of the application, discovery, attending the prehearing conference, and reviewing the nondisclosure agreement utilized in this proceeding for confidential materials. These activities were necessary for participation in the proceeding regardless of the issues addressed. The claimed hours are reasonable given the scope of this proceeding. Since Aglet made a substantial contribution as discussed above, we award compensation for these hours.

To participate in this proceeding, regardless of the issues addressed, it was necessary for Aglet to spend hours on travel and preparing its intervenor compensation claim. The claimed hours are reasonable given the scope of this proceeding. Since Aglet made a substantial contribution as discussed above, we award compensation for these hours.

For the reasons discussed above, the hours for which we grant compensation are:

Compensable Hours

Cost-effectiveness - Weil	0.00
Cost-effectiveness - Czahar	0.00
Capital Additions - Weil	32.79
Other - Weil	13.80
General - Weil	29.90
General - Czahar	14.60
Travel - Weil	52.70

5.2 Market Rate Standard

We next take into consideration whether the claimed fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services.

Aglet seeks an hourly rate of \$250 for work performed by Weil in 2004, 2005, and 2006. We approved this rate for Weil in D.04-12-039 for 2004 work, and find it reasonable for 2004, 2005, and 2006.

Aglet seeks an hourly rate of \$220 for work performed by Czahar in 2004. In D.03-07-010, we approved this rate for Czahar for 2002 work, and find it reasonable for 2004.

5.3 Productivity

D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. The costs of a customer's participation should bear a reasonable relationship to the benefits realized through their participation. This showing assists us in determining the overall reasonableness of the request.

This proceeding did not set rates, and no direct dollar amount benefit from an intervenor's participation can be identified. The SGRP will cost ratepayers hundreds of millions of dollars over the remaining license lives of Diablo.⁶ The purpose of this proceeding was to determine whether the SGRP should proceed. Aglet made a substantial contribution to that determination by helping the Commission to assess the risks and benefits. Aglet's expenditures, given its

⁶ Since the end of the operating licenses for each unit is different, the remaining life for each unit is different.

substantial contribution, are miniscule in comparison to the SGRP costs.

Therefore, we find Aglet's participation was productive.

5.4 Direct Expenses

The itemized direct expenses submitted by Aglet include costs for travel, photocopying, postage, telephone/fax and messenger services and total \$1,327.17. These expenses are commensurate with the work performed, and we find them reasonable.

6. Award

As set forth in the table below, we award Aglet \$30,249.17.

<u>Award</u>				
Professional hours - Weil	76.49 hours	@	\$250/hr =	\$19,122.50
Travel hours ⁷ -Weil	52.70 hours	@	\$125/hr =	\$6,587.50
Professional hours - Czahar	14.60 hours	@	\$220/hr =	\$3,212.00
Expenses				<u>\$1,327.17</u>
Total				\$30,249.17

Consistent with previous Commission decisions, we order that interest be paid on the award amount (at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15) commencing the 75th day after Aglet filed its compensation request and continuing until full payment of the award is made. The award is to be paid by PG&E, the applicant in this proceeding.

We remind all intervenors that Commission staff may audit their records related to this award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor

⁷ Includes time to prepare the compensation request.

compensation. Aglet's records should identify specific issues for which it requested compensation, the actual time spent by each employee or consultant, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation was claimed.

7. Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, as provided by Rule 77.7(f)(6) of our Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

8. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner, and Jeffrey P. O'Donnell is the assigned ALJ in this proceeding.

Findings of Fact

1. Aglet has satisfied all the procedural requirements necessary to claim compensation in the proceeding.
2. Aglet made a substantial contribution to D.05-02-052 and D.05-11-026 as described herein.
3. Aglet's requested hourly rates are reasonable when compared to the market rates for persons with similar training and experience.
4. The total of the reasonable compensation is \$30,249.17.
5. The appendix to this opinion summarizes today's award.

Conclusions of Law

1. Aglet has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed compensation, as adjusted herein, incurred in making substantial contributions to D.05-02-052 and D.05-11-026.

2. Aglet should be awarded \$30,249.17 for its contributions to D. 05-02-052 and D.05-11-026.

3. Per Rule 77.7(f)(6), the comment period for this compensation decision may be waived.

4. This order should be effective today so that Aglet may be compensated without further delay.

5. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. Aglet Consumer Alliance (Aglet) is awarded \$30,249.17 as compensation for its substantial contributions to Decision (D.) 05-02-052 and D.05-11-026.

2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company shall pay Aglet the total award. Payment of the award shall include interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning April 5, 2006, the 75th day after the filing date of Aglet's request for compensation, and continuing until full payment is made.

3. The comment period for today's decision is waived.

4. Application 04-01-009 is closed.

This order is effective today.

Dated June 29, 2006, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
JOHN A. BOHN
RACHELLE B. CHONG

Commissioners

Commissioner Dian M. Grueneich recused herself from this agenda item and was not part of the quorum in its consideration.

APPENDIX**Compensation Decision Summary Information**

Compensation Decision:	D0606058	Modifies Decision? N
Contribution Decision(s):	D0502052 and D0511026	
Proceeding(s):	A0401009	
Author:	ALJ O'Donnell	
Payer(s):	Pacific Gas and Electric Company	

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
Aglet	1/20/06	\$65,081.67	\$30,249.17	N	Failure to make a substantial contribution, and correction of computational error

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
James	Weil	Policy Expert	Aglet	\$250	2004-6	\$250
Raymond	Czahar	Policy Expert	Aglet	\$220	2004	\$220

(END APPENDIX)